were delegated to the Singapore Police Force to be exercised in accordance with the provisions of the Police Force Ordinance, 1958 and regulations made thereunder.

Under section 10(2) of the Police Force Ordinance, 1958 a subordinate officer above the rank of constable may be appointed by the Commissioner of Police (hereinafter referred to as "the Commissioner").

Counsel for the plaintiff relies on Article 135(1) of the Constitution of Malaysia, the relevant part of which reads as follows: —

"(1) No member of any of the services mentioned in paragraph (b) to (g) of Clause (1) of Article 132 shall be dismissed or reduced in rank by an authority subordinate to that which, at the time of the dismissal or reduction, has power to appoint a member of that service of equal rank."

It is therefore contended by counsel for the plaintiff that only the Commissioner had the power to dismiss the plaintiff.

Now section 4(1) of the Police Force Ordinance, 1958 provides as follows: —

"(1) Any act or thing which may be done, ordered or performed by the Commissioner under this or any other written law may, subject to the orders and directions of the Commissioner, be done, ordered or performed by the Deputy Commissioner, a Senior Assistant Commissioner of Police, or an Assistant Commissioner of Police."

Counsel for the defendant has submitted that under section 4(1) of the Ordinance an Assistant Commissioner of Police had the power to dismiss the plaintiff.

On the other hand, counsel for the plaintiff has referred to the marginal note to section 4 which reads "Delegation of powers." It should be noted that the same marginal note appears in relation to section 5 of the Police Force Ordinance No. 39 of 1941 as repealed and re-enacted by the Singapore Police Force Ordinance No. 29 of 1949. By section 5(1) of the Police Force Ordinance No. 39 of 1941 as so repealed and re-enacted, power to delegate was expressly given to the Commissioner. In my opinion, section 4(1) of the Police Force Ordinance, 1958 does not confer on the Commissioner the power to delegate any of his powers. The effect of section 4(1) is that any act which may be done by the Commissioner may, subject to his orders and directions, be done by an Assistant Commissioner of Police. The right of the Commissioner to give orders and directions is controlled by section 54 of the Police Force Ordinance, 1958 which provides, *inter alia*, that the Commissioner may make such orders not inconsistent with the provisions of the Ordinance as he may think expedient. It follows that if any of the Police General Orders made by the Commissioner are inconsistent with section 4(1) of the Police Force Ordinance, 1958 they are ineffective or null and void. In my opinion, section 4(1) of the Ordinance conferred the power on Mr. Ratna Singam to dismiss the plaintiff the Police Force. If the Commissioner desired it, the dismissal could have been done subject to his orders and directions, but the power to dismiss remained vested in Mr. Ratna Singam by virtue of section 4(1).

The presence of the marginal note to section 4 of the Police Force Ordinance, 1958 did not, in my opinion, derogate from the power to dismiss which, as I have stated, remained vested in Mr. Ratna Singam. It is to be observed that section 4(2) of the Police Force Ordinance, 1958 confers certain powers of delegation on the Commissioner in the absence or incapacity of the Deputy Commissioner. The marginal note is therefore appropriate in relation to section 4(2).

The eighth and last point relied upon by the plaintiff is that the findings at the inquiry were so unreasonable that no reasonable person could have made such findings. All I need say on this point is that the inquiry was properly conducted, that Mr. Koh did nothing in excess of his jurisdiction and that his findings were reasonable.

In my judgment, there is no substance in any of the eight points put forward on behalf of the plaintiff.

The plaintiff's claim is accordingly dismissed with costs.

Claim dismissed.

Solicitors: *J. B. Jeyaretnam & Co.*

OSMAN BIN ALI v. PUBLIC PROSECUTOR

[C.C.A. (Wee Chong Jin C.J., Chua and Tan Ah Tah JJ.)

September 11, 1972]

[Singapore — Criminal Appeal No. 15 of 1971]

Penal Code, s. 300, Exception 7 — Murder — Defence of diminished responsibility.

Criminal Law and Procedure — Defence of diminished responsibility raised — Rebuttal evidence — Whether prosecution entiled to call evidence after close of defence case — Practice of court.

The appellant was tried in the High Court of two judges on two charges of murder. Autopsies performed on the two dead bodies revealed that the cause of death in each case was asphyxia from strangulation and the pathologist who performed the autopsies was of the opinion that the likely position of the assailant was behind the deceased in both cases and that a rope was used. The appellant admitted causing the death of both deceased by strangulation with a piece of rope but maintained that he caused their death in circumstances which did not constitute the offence of murder. The appellant gave evidence on oath and claimed that in each case he pushed the rope from in front of the deceased against the throat with no intention to cause death and was not conscious of the fact that he had a rope in his hands. The main defence, however, was one of diminished responsibility which, if found proved, would have, under Exception 7 of section 300 of the Penal Code, reduced the offence committed to one of culpable homicide not amounting to murder. Medical evidence was called on behalf of the appellant in support of the defence of diminished responsibility. After the defence closed its case, the trial judges allowed the prosecution to call four witnesses who gave evidence in rebuttal of the defence of diminished responsibility. At the conclusion of the trial, the judges rejected both defences and found that the appellant "strangled both the deceased from behind them and in each case it was a deliberate conscious act of strangulation". The appellant was convicted on both charges of murder and sentenced to death.

On appeal, it was contended on behalf of the appellant that the prosecution was permitted to call evidence in rebuttal

without any statutory or other authority; that the trial court did not adequately consider the evidence of abnormality of mind; and that the trial judges were wrong in finding that the strangulation of both deceased by the appellant was carried out by the appellant standing behind each of his victims and that they were also wrong in finding that in each case it was a deliberate conscious act of strangulation.

Held, dismissing the appeal: (1) it is clear law that, apart from statute, the trial court has a discretion whether evidence, not having been tendered as part of the prosecution case, ought to be given as rebuttal evidence; that a trial court is necessarily in a far better position to exercise this judicial discretion with much more ample means of knowledge as to whether the evidence can be fairly admitted or not, than an appellate court; that an appellate court should not interfere with the exercise of that discretion unless it has resulted in injustice to the accused and that in the circumstances of this case, the rebuttal evidence had not been improperly admitted and had not operated unfairly against the appellant as to amount to a miscarriage of justice;

(2) there was plainly evidence to justify the trial court in rejecting the defence of diminished responsibility and as the trial judges were also judges of fact, it had not been shown that they were wrong in their finding that the appellant had failed to make good the defence of diminished responsibility;

(3) there was ample evidence to support the finding of the trial court that the strangulation of both deceased was carried out by the appellant standing behind each of his victims and also to support the finding that in each case it was a deliberate conscious act of strangulation;

(4) the prosecution had proved beyond any reasonable doubt that the appellant had caused the deaths of both deceased in circumstances which amounted to murder under section 300 of the Penal Code.

COURT OF CRIMINAL APPEAL.

Dato' David Marshall for the appellant.

Chia Quee Khee (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Wee Chong Jin C.J. (delivering judgment of the court): The appellant, Osman bin Ali, was found guilty by the High Court on two charges of murder and convicted. He now appeals against his conviction. The facts are these.

The appellant was on 1st November 1970 employed by a Mr. C. P. Thomas as a gardener since 1962. At the material date Mr. Thomas had also under his employ an amah, Wu Tee (f), a cook Tan Tai Hin and a housekeeper Miss Lim Mei Choo. The amah, the cook and the housekeeper all lived in but the appellant did not. The amah, Wu Tee, had a daughter Miss Low Ek Meng, a secondary school student, who stayed with her mother at Mr. Thomas' house. Wu Tee's day off was on Saturday and she and her daughter spend it in their own house.

November 1st 1970 was a Sunday and at about 8 a.m. Mr. Thomas, his daughter and the housekeeper left the house for a picnic in Johore. The amah returned to Mr. Thomas' house on that morning and her daughter Miss Low went there shortly thereafter arriving at about 8.15 a.m. On arrival she saw her mother washing clothes in the bathroom which is beside the cook's room. She also saw the cook near the bathroom and then she went into her mother's room. Later, after she had breakfast, she saw the cook leave the house to go marketing. She also left the house and bought a newspaper and then returned to Mr. Thomas' house. She saw her mother hanging up clothes and while reading the newspaper she had bought she saw the gardener, the appellant, coming from the garage and pass her door and then heard him talking to her mother in the kitchen. Then her mother told her to close the door which she did. About an hour later the cook returned and she heard him talking to the gardener. Shortly thereafter she heard the cook washing clothes in the bathroom. Then she heard the cook utter the Malay words "apa macham" in a frightened voice and heard coughing and sounds like bubbles in water. She became frightened and peeped through the key hole in the door of her room. She saw nobody, opened the door and walked a few steps towards the bathroom. She heard sounds as if someone was searching in the cook's room. She also saw a pair of legs, the cook's, with back of the heels on the floor of the bathroom. She became frightened, ran into her mother's room, peeped out of the window and through the key hole and then ran out of the house to a neighbour, the cook of the next door house. There she telephoned the police. After telephoning and while she was still at the neighbour's house she saw the gardener walking near the garage of Mr. Thomas' house.

A police party of three arrived at the neighbour's house at about 11.11 a.m. and after meeting the amah's daughter the sergeant in charge went to Mr. Thomas' house. In the cook's room the police sergeant saw a man, the cook, hanging from the struts of a closed window with the feet a few inches above the floor. The police sergeant then went to his police car and after the driver of the car had sent for an ambulance the two of them returned to Mr. Thomas' house. On searching the house the police sergeant saw a woman, the amah, lying in a bathtub filled with water, of the bathroom. When the ambulance arrived the ambulance attendant found both the cook and the amah dead. A police inspector, Inspector Ling, also arrived and took charge of the investigations. He found the dead cook was wearing a glove over his left hand and a piece of rope tied round his neck. While he was at the scene the gardener was given to his custody by a police corporal who had earlier at about 12.15 p.m. taken custody of the gardener at the Bukit Timah Police Station. He found the gardener smelling of alcohol and in a state of collapse and so sent the gardener to the Outram Road Hospital.

On that morning the gardener had asked a Malay girl of secondary school age the way to the 6th milestone Bukit Timah Road. The girl said he did not smell of alcohol. Later on the gardener bought a quarter bottle of "Orang Tua" liquor from a shop and consumed all of it mixed with water. The same morning he also visited his wife's cousin at a house at 6th milestone Bukit Timah Road and told this relative that he had killed two persons at his place of work because of a misunderstanding which occurred sometime ago. He also told this relative he wanted to hide out but was advised it was better for him to surrender himself at the police station at the 7th milestone Bukit Timah Road. The gardener left after giving his relative $30 to give to his mother.

Then at about 11.58 a.m. the gardener showed up at the Bukit Timah Police Station and said he wanted to make a report. The report which was made in Malay, when translated reads:—

"On 1.11.70 at 10.30 a.m. I hit the maid servant and the cook at 15 Leedon Park because of an argument about work. These persons were lying down when I went to the station to surrender myself."

The police officer after taking down the gardener's report telephoned to the Orchard Road Police Station. While he was speaking on the telephone the gardener collapsed and fainted and was lifted from the floor and put on a long bench and revived with water.

The gardener was examined at about 1.45 p.m. that afternoon by a doctor attached to the Outram Road Hospital. No external injuries were found on him. He was drowsy and smelt of alcohol and was unresponsive when asked questions. A stomach wash was administered but as he could not communicate a blood specimen was not taken at the time of his admission until around 7.30 p.m. The doctor's report said that after the stomach wash the gardener "became conscious and rational" and in the opinion of the doctor the gardener was at time of the admission having mild alcoholic intoxication.

While the gardener was at the hospital a police officer, with the permission of the doctor attending him, took a statement from him after administering the usual caution and then charging him on two charges of having murdered the amah and the cook. The gardener made the following statement:—

"Today at 10.00 a.m. I told amah and I am working and if the missy returned home to tell her that I have been working today from 1.00 p.m. until 5.00 p.m. Tomorrow Monday I will come to work half day from 1.00 p.m. until 5.00 p.m. also. Then cooky come home from the market and asked me 'why kebun came'. After that cooky and amah quarrelled and said why I should come to work when it was my off day. They talked a lot. I went out. I heard amah shouting help, help. I pushed them apart and said why they wanted to quarrel because of me. After that I took a ladder and wanted to bring down the tree that was entangled with the Christmas tree. After that I heard amah shouting for help again. I went into the bathroom and saw the amah fallen into the bathroom. I held her and noticed her legs had some blood. I ran out and followed the cooky. The cooky entered his room. After that I saw him hanging. I called the amah's child not the cooky's child but the amah's child was not in. I was frightened. I went out and went to King's Road. I asked a small girl whether this road leads to 6th milestone and she said that this road can lead to the 6th milestone. I also asked her where is the Police Station. She told me at 7th milestone and if it was far away to take a bus for 5 cents. I then went to a Police Station. As I was feeling giddy I quickly gave the Police my identity card and said 15 Leedon Park has some trouble. Then I fell. I don't know what happened after that. I woke up and found myself in the room and a nurse came and called me Osman, Osman. I don't know what the nurse was saying. I said I took orang tua."

Autopsies performed on the dead bodies of the amah and the cook revealed that the cause of their deaths was asphyxia from strangulation and the pathologist who performed the autopsies was of the opinion that the likely position of the assailant was behind the deceased in both cases and a rope was used.

The defence put forward at the trial was that the gardener (we shall hereinafter refer to him as "the appellant") in each case pushed the rope from in front of each of the deceased against the throat with no intention to cause death and not conscious of the fact that he had a rope in his hands. The main defence however was one of diminished responsibility which if found proved would under Exception 7 of section 300 of the Penal Code reduce the offence committed to one of culpable homicide not amounting to murder. The trial judges rejected both defences and found that the appellant "strangled both the deceased from behind them and in each case it was a deliberate conscious act of strangulation".

In our judgment the evidence was overwhelmingly sufficient to support the trial judges' finding that the appellant had caused the death of the amah and the cook in circumstances which amounted to the offence of murder. The only possible defence that emerges from all the evidence and the findings of fact by the trial judges is that of diminished responsibility under Exception 7 of section 300. Exception 7 reads as follows:—

"Culpable homicide is not murder if the offender was suffering from such abnormality of mind (whether arising from a condition of arrested or retarded development of mind or any inherent causes or induced by disease or injury) as substantially impaired his mental responsibility for his acts and omissions in causing the death or being a party to causing the death."

Medical evidence was led by both the prosecution and the defence. Dr. Wong Yip Chong, a private consultant psychiatrist, a witness for the defence, stated in a written report that he was of the opinion that the appellant has an arrested development of the mind and most probably has epilepsy. His written report describes the appellant thus:

"While generally he is a so-called stable dullard or defective in the sense that he has led a quiet and unobstrusive life without any significant conflict with others nevertheless, by virtue of his disability of mind he has all the potentials of being above normal in sensitivity and of even reacting with uncontrollable violence to trivial cause or provocations, at certain critical times".

He then goes on to state that —

"in this sense on the occasion in question I speak of his mental instability, which aggravated by his toothache and hunger he could have reacted with just this over-sensitivity to the provocations by an uncontrollable and impulsive anger and in that state caused the death of the two deceased."

Dr. Wong Yip Chong in his report was of the opinion that at the time the appellant committed the offences he was likely to have been suffering from such an abnormality of mind arising from an arrest in its development and from disease that his mental responsibility was substantially impaired. In his testimony before the trial court Dr. Wong Yip Chong elaborated on his written report and gave the assumptions of facts on which he based his psychiatric assessments of the appellant.

The prosecution called in rebuttal two psychiatrists. One Dr. Wong Sze Tai had examined the appellant in November 1970 and in his written report dated 26th November 1970 stated this of the appellant:

"Although psychological tests' results indicate that he is functioning between borderline defective and low dull-normal range of intelligence, it is likely that his potential is that of dull-normal level".

After another psychologist Dr. F. Y. Long had at his request performed another assessment of the I.Q. of

the appellant and after interviewing the appellant's mother and hearing the appellant giving evidence at the trial, he testified that the appellant was not subnormal in intelligence and was not at the time of the offence suffering from any abnormality of the mind as to come within the ambit of diminished responsibility.

Dr. Long who examined the appellant on 2nd June 1971 in his report was of the opinion that the appellant "is at least of dull-normal intelligence". All the medical experts were questioned at length at the trial.

The prosecution also called the employer and a step-brother of the appellant to give evidence in rebuttal on the issue of diminished responsibility. The employer testified that the appellant had been in his employment as a house gardener for nine years and during that period found him a trustworthy, quiet, good and willing employee and willingly assisted when called upon as a handy man around the house.

The trial judges found that although the appellant's mind was dull, it was normal and also found that there was no evidence that he suffered from epileptic fits or was incapable of or experienced difficulty in exercising control over his will-power. They also found that even if it could properly be said that the appellant was suffering an abnormality of the mind to some degree it was not such as substantially impaired his mental responsibility for these two acts of killing.

Counsel for the appellant has raised several grounds of appeal. The first ground is that the prosecution were permitted to call Dr. Wong Sze Tai, Dr. F. Y. Long, Mr. C. P. Thomas (the employer) and Salim bin Ali (the step-brother) in rebuttal without any statutory or other authority. It is clear law that, apart from statute, the trial court has a discretion whether evidence, not having been tendered as part of the prosecution case, ought to be given as rebutting evidence. There is also ample authority that a trial court is necessarily in a far better position to exercise this judicial discretion with much more ample means of knowledge as to whether the evidence can be fairly admitted or not than an appellate court. There is also abundant authority that an appellate court would not interfere with the exercise of that discretion unless the exercise of the discretion has resulted in injustice to the accused.

It has been, so far as we are aware, the practice of the High Court to allow the prosecution to call medical evidence in rebuttal where an accused person adduces evidence in support of a defence of diminished responsibility. A similar practice, so far as we are aware, prevails in England. In so far as non-medical evidence is concerned the principle that ought to be applied is whether or not the rebuttal evidence, if admitted, would operate unfairly against the accused and where it has been admitted the test is, as stated above, whether the accused has suffered an injustice. Applying these principles we are of the opinion, in the circumstances of this case, that the rebuttal evidence has not been improperly admitted and has not operated unfairly against the appellant as to amount to a miscarriage of justice.

The next ground is that the trial court did not adequately consider the evidence of abnormality of mind when holding that the appellant was not suffering from any abnormality within the meaning of Exception 7 to section 300 of the Penal Code. In our opinion this ground is without substance. The trial judges at the close of the trial convicted the appellant of murder and it must be inferred that they had, when so convicting, considered all the evidence adduced before them at the trial, including the evidence relevant to the issue of diminished responsibility. There was plainly evidence to justify the trial court in rejecting the defence of diminished responsibility and as the trial judges were also judges of fact we have not been persuaded that they have in any way misapprehended the facts or inadequately considered the evidence relevant to diminished responsibility for us to come to the conclusion that they were wrong in finding that the appellant had failed to make good the defence of diminished responsibility. In any event on the *verbatim* report of the evidence which we have we agree with this finding of the trial judges.

The other ground urged before us is that the trial judges were wrong in finding that the strangulation of both deceased by the appellant was carried out with the appellant standing behind each of his victims and was wrong in finding that in each case it was a deliberate conscious act of strangulation. We also reject this ground as in our opinion there was ample evidence to support these two findings. In our judgment on the evidence before the trial court, apart from the issue of diminished responsibility under Exception 7 to section 300 of the Penal Code, the prosecution has proved beyond any reasonable doubt that the appellant had caused the deaths of the amah and the cook in circumstances which amount to murder under section 300 of the Penal Code and we accordingly dismiss the appeal.

Appeal dismissed.

Solicitors: *David Marshall.*